



INSURANCE

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Nebraska Senior Protection in Annuity Transactions Act

The purpose of the Nebraska Senior Protection in Annuity Transactions Act is to set standards so that purchase or exchange recommendations to consumers 65 years of age and older regarding annuity transactions meet their insurance needs and financial obligations. The Act applies to fixed or variable annuities that are individually solicited, whether classified as an individual or group annuity.

The Act is not applicable to:

- Direct response solicitations if there is no recommendation based on information collected from the applicant
- Contracts used to fund employee pension or welfare benefit plans covered by ERISA
- 401K and similar plans
- Government and church plans under sections of IRS Codes 414 and 457
- Employer sponsored deferred compensation plans
- Legal settlement funds
- Pre-need burial contracts

The Act requires insurance producers to have reasonable grounds to believe that the recommendation is suitable for the senior consumer based on the facts disclosed by the senior consumer before making a recommendation. Recommendations must take into consideration such information as the consumer's investments, other insurance products, and the financial situation and needs of the senior consumer. The

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Department would like to remind producers that making a recommendation to replace an existing investment or security with an annuity may be construed as offering the type of financial consultation that would require an appropriate securities license. This is especially true when there is not a clear indication that the products, which will ultimately be marketed, are insurance or annuities. Prior to execution of the purchase transaction or exchange transaction, the producer or insurer is required to make efforts to obtain information from the consumer involving:

- Financial status, including investments
- Other insurance products owned
- Tax status
- Investment objectives
- Other reasonable information useful for making a recommendation

When collecting information about financial status and investments, a producer may wish to clearly identify, both verbally and on application forms, that collection of financial status information will be used solely to determine suitability of annuity recommendations and not for other investment planning purposes. Clearly identifying the use of the information will help to avoid the appearance of providing financial consultation without the benefit of an applicable securities license.

Under the Act, **insurers must:**

1. Implement systems to monitor compliance
2. Supervise recommendations
3. Maintain written procedures
4. Conduct periodic reviews of its records

Under the Act, **general agents and independent agencies must:**

1. Maintain written procedures
2. Conduct periodic reviews of records

Delegation or contracting supervision to third parties is allowed as permitted by the Act. NASD Conduct Rules are satisfactory for compliance with variable annuity transactions.

Questions concerning the Act may be directed to Bruce Ramge, Chief of Market Regulation, at bramge@doi.state.ne.us.

FRAUD DIVISION

Annual Fraud Seminar

Don Kleine, Chief of the Criminal Bureau for the Nebraska Department of Justice, provided opening remarks to a group of Law Enforcement Officers from across the State on June 21, 2006. Mr. Kliene assured the officers that his office under the leadership of Jon Bruning has taken an aggressive approach in dealing with insurance fraud and "white collar" crimes in general.

The Seminar was sponsored by the Nebraska Department of Insurance, Fraud Prevention Division, at the Eugene T. Mahoney State Park. The training covered staged accidents, vehicle theft fraud and cloning of vehicle titles. Law Enforcement Officers represent the front line of defense in preventing insurance fraud by conducting through initial investigations and training such as this helps provide the training to do so.

The rules of the assigned risk plan are intended to implement the provision in Nebraska law that restricts eligibility to employers that are, "in good faith entitled to, but unable to obtain, workers' compensation insurance through ordinary methods."

Paying a substantially higher premium for other coverage in order to get workers' compensation insurance in the voluntary market is not obtaining workers' compensation insurance through "ordinary methods."

PROPERTY & CASUALTY DIVISION

Workers' Compensation Assigned Risk Eligibility

The Department has received questions regarding employers that were allegedly able to obtain workers' compensation insurance in the voluntary market, but were placed in the assigned risk plan. The rules of the assigned risk plan are intended to implement the provision in Nebraska law that restricts eligibility to employers that are, "in good faith entitled to, but unable to obtain, workers' compensation insurance through ordinary methods." We shall address several common scenarios by means of examples:

Situation 1: An agent can place an employer's workers' compensation with insurer ABC for \$2,000, as long as the rest of the employer's package policy is placed with the same company for a premium of \$18,000. The agent also has access to insurer XYZ, which is unwilling to write the workers' compensation, but will write the package policy for \$10,000.

Response: We would not object to the agent placing the package with insurer XYZ and placing the workers' compensation in the pool if no other insurer is willing to write the workers' compensation policy on a stand-alone basis. Paying a substantially higher premium for other coverage in order to get workers' compensation insurance in the voluntary market is not obtaining workers' compensation insurance through "ordinary methods."

The law refers to the ability of the employer to obtain workers' compensation insurance, and not the ability of a particular agent to do so.

We don't believe that a policyholder should be coerced to place its coverages with another agency simply to access voluntary workers' compensation coverage.

The basic principle is that the employer is eligible if neither it nor its agent is aware of voluntary coverage that is available, either with that agent or elsewhere.

Situation 2: An agent has no market for an employer's workers' compensation insurance, but the employer and agent are aware of another agent with a market that will write the workers' compensation insurance on a stand-alone voluntary basis.

Response: The law refers to the ability of the employer to obtain workers' compensation insurance, and not the ability of a particular agent to do so. In this case, we believe that it is misrepresentation for the employer to state that it is unable to obtain workers' compensation insurance. As much as the agent, and perhaps the employer, might not like to go to the other agent for workers' compensation insurance, that is where the law pushes them. If a dispute were to arise in which someone were to report the situation to the Department, it is likely that we would find that the employer is ineligible for workers' compensation insurance through the assigned risk plan.

Situation 3: Agent "A" has no market for an employer's workers' compensation coverage. Competing agent "B" has a market for the workers' compensation, but this company won't take the workers' compensation unless it gets the entire package. The employer would rather go with agent "A" or its markets for one or more reasons.

Response: This is similar to example 1. We don't believe that a policyholder should be coerced to place its coverages with another agency simply to access voluntary workers' compensation coverage. As such, we would not object to the policyholder seeking assigned risk workers' compensation coverage through agent "A". We would object, however, if either agent "A" or "B" had a stand-alone market for workers' compensation that was willing to write the business.

Other situations can arise, but these situations seem to be the most common now that insurers appear to be somewhat more willing to take employers out of the assigned risk plan.

When filling out the assigned risk application, it is important to be truthful. If you have a situation where coverage is available, but only if the employer were to place its coverage elsewhere, then it may be necessary to attach an explanation. The basic principle is that the employer is eligible if neither it nor its agent is aware of voluntary coverage that is available, either with that agent or elsewhere.

Bev was highly regarded by her coworkers in the Department and her counterparts from other states for her insurance knowledge. She was admired for her cheerful attitude and was a true friend to those with whom she worked.

PRODUCER LICENSING DIVISION

The insurance regulatory community and insurance industry members throughout the country were saddened to learn of the recent death of Beverly Creager. Bev joined the Department in September of 1974 and was promoted to Producer Licensing Administrator in July of 1995.

Bev attended NAIC national meetings on a regular basis and worked closely with the NAIC Producer Licensing Group to help bring about licensing uniformity reforms. Bev was highly regarded by her coworkers in the Department and her counterparts from other states for her insurance knowledge. She was admired for her cheerful attitude and was a true friend to those with whom she worked.

“Bev was a dedicated licensing professional, as knowledgeable as anyone in the country on licensing issues. For those of us in the department, Bev was someone truly special to be around. We will miss her smile, her laughter, and most of all simply the joy of having her with us.”—Director Tim Wagner

LIFE & HEALTH DIVISION

SERFF Filings

Companies may submit form and rate filings to the Life and Health Division on paper or electronically. Electronic submissions may be made via the System for Electronic Rate and Form Filing (SERFF). The Life and Health Division accepts all life, health, credit and annuity filings on SERFF. All documents attached to a SERFF filing must be in .pdf form. This allows us to utilize Adobe Acrobat features such as Document Compare. Please do not attach scanned documents.

A new enhanced version of SERFF is scheduled to be implemented October 30 of this year. Due to the enhanced features of the new SERFF system, the division will no longer accept filings submitted via e-mail beginning November 1.

As a result of the enhanced features of the new SERFF system, due to be implemented October 30, the division will no longer accept filings submitted via e-mail beginning November 1.

Lists of previously approved filings available for public view can be found in Excel spreadsheet format on the life/health page of the Department's website at www.doi.ne.gov.

SERFF filings are no longer printed, but a public view computer is now available for companies who wish to view SERFF filings approved by the Life and Health Division.

Some insurers and claims adjusting firms are incorrectly estimating sales tax reimbursement for motor vehicle repairs which creates unnecessary administrative handling for repair facilities and in some cases vehicle owners.

The division keeps previously approved filings on file for public view for a period of 11 months. Lists of previously approved filings in Excel spreadsheet format are now available on the life/health page of the Department's website at **www.doi.ne.gov**. The excel files provide a list of the filings available for public view.

A public view computer is now available for companies who wish to view SERFF filings approved by the Life and Health Division. In the past SERFF filings were printed and were available for public view on paper. SERFF filings are no longer printed and may be viewed online.

Please contact Deb Cooper at **deb.cooper@doi.state.ne.us** to make an appointment to view previously approved paper or SERFF filings.

If you have any questions regarding the submission of forms and rates, please do not hesitate to contact the Life and Health Division at **lifehealth@doi.state.ne.us**.

MARKET CONDUCT DIVISION

Repair Estimates and Reimbursement of Sales Tax on Vehicle Repairs

It has been brought to the attention of the Nebraska Department of Insurance that some insurers and claims adjusting firms are incorrectly estimating sales tax reimbursement for motor vehicle repairs. Incorrect calculations on adjuster prepared estimates create unnecessary administrative handling for repair facilities and in some cases vehicle owners. The Nebraska Insurance Unfair Claims Settlement Practices Act, together with Nebraska Regulations, Title 210, Chapter 60, require prompt and reasonable claim settlement practices.

Information about sales tax on motor vehicle repairs and painting is available on the Nebraska Department of Revenue website at **www.revenue.state.ne.us/question/business**.

LEGAL DIVISION

Supreme Court Cases

Riesen v. Irwin Indus. Tool Co., 272 Neb. 41

This case involved a lawsuit filed by an individual against his former employer alleging he was fired in retaliation for filing a workers' compensation claim. The trial court ruled that the employee's evidence failed to establish that the employer, Irwin Industrial Tool Company, was motivated by retaliation or that the company's justification for termination was pretextual and therefore granted summary judgment for the employer. The employee timely appealed the trial court's decision.

The Supreme Court of Nebraska, in reversing the trial court's order of summary judgment and remanding the cause for further proceedings, found that the former employee met his burden of establishing a prima facie case of retaliatory discharge for filing a workers' compensation claim. The Court also ruled that the employee's evidence, viewed in a manner most favorably to the employee, created a genuine issue of fact as to whether the reason offered by Irwin Industrial for the employee's termination was a pretext for an impermissible termination. Specifically, the Court found that the temporal proximity of two days between the employee's notice that he needed additional surgery and the termination of his employment, coupled with evidence of his satisfactory work performance, created causal nexus sufficient to establish a prima facie case of retaliatory discharge.

Additionally, while the Court held that Irwin Industrial met its burden of production by asserting that it had terminated the employee because the employee had misrepresented his past employment on his employment application, the Court provided that statements made by the Irwin Industrial's human resource manager and the manager's refusal to sign an insurance form could create an inference that the company was biding its time until it found a reason to terminate the individual and that the termination was actually in retaliation for the individual's workers' compensation claim. Again, the Court concluded that the employee had established a prima facie case of retaliatory discharge and reversed the trial court's order granting summary judgment for Irwin Industrial.

Amendments to Chapter 39 Adopted

Chapter 39, "Coordination of Benefits," was amended to reflect the changes made upon the National Association of Insurance Commissioners model regulation. The rule was filed with the Secretary of State on July 3, 2006, with an implementation date of July 8, 2006. Copies of Amended Chapter 39 are available on the Department's website at www.doi.ne.gov.

Any questions concerning Amended Chapter 39 should be directed to Martin Swanson, Counsel, at mswanson@doi.state.ne.us.

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1616 Curtis Keith Miller Trenton, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b), (g) & (h) and 44-1525 (1)(a) & (f). Unfair trade practices; used fraudulent, coercive or dishonest practices; misrepresented terms of a policy to induce purchase or exchange of policy.	Consent Order \$500 admin. fine; 3 additional hours of continuing education and 9 months probation 7/28/06
A-1646 Matthew Green Grand Island, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b), (e) & (h). Misrepresented application terms; used fraudulent, coercive or dishonest practices.	Consent Order \$2,500 admin. fine 4/21/06
A-1654 Kimberly S. Lopez Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(a), (b) & (f). Provided incorrect information on license application; convicted of felony or a Class I, II, or III misdemeanor.	Consent Order \$250 admin. fine 5/18/06
A-1655 Jeffrey Sweezey Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b), 44-4065(2), 44-4028(13) & 44-4031. Failed to notify Department within 30 days of arraignment; obtained a license through misrepresentation; violated Insurance Producers Licensing Act.	Order Producer's License Revoked 5/12/06
A-1657 Jeffrey Gossin Lincoln, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b), (h) & (j), 44-1525(10). Used fraudulent coercive or dishonest practices; forging another's name to an insurance application; and false statements or representations on an application.	Order \$3,000 admin. fine 7/7/06
A-1659 Capitol Title & James C. Lamphere Lincoln, NE	Violated <u>Neb.Rev.Stat.</u> §44-361. Rebate of premium or agent's commission.	Consent Order \$2,000 admin. fine 4/12/06
A-1660 Jerry Stuck York, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (d). Violated any insurance law; improperly withheld, misappropriated or converted monies collected.	Consent Order Producer's license revoked 4/17/06

Actions Taken Against Producers (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1661 Phillip A. Parimore Cordova, TN	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11), 44-4059(1)(b) & (h), 44-4065(1), 44-4053(2) & 44-4054(8). Failed to respond to Department within 15 business days; used fraudulent, coercive or dishonest practices; failed to report administrative action taken in another state; failed to submit uniform business application; failed to notify the department of address change within 30 days.	Order Producer's license revoked 5/12/06
A-1662 Jeffrey D. Etter Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(a), (b), (c), (h) & (i) and 44-4065(1). Provided misleading information on license application; obtained a license through misrepresentation; used fraudulent, coercive or dishonest practices; producer's license revoked in another state; failed to report administrative action in another state.	Order Producer's license revoked 5/18/06
A-1663 Peter E. Miover Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(a), (b), (c), (h) & (i) and 44-4065(1). Provided misleading information on license application; obtained a license through misrepresentation; used fraudulent, coercive or dishonest practices; producer's license revoked in another state; failed to report administrative action in another state.	Order Producer's license revoked 5/18/06
A-1664 JGP, LLC dba Prestige Title, Heather Robinson and Peggy Robinson Omaha, NE	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(h). Used fraudulent, coercive or dishonest practices.	Consent Order \$1,000 admin. fine 5/31/06
A-1665 Nathan A. Smith Greenville, SC	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (h) and 44-4054(8). Used fraudulent coercive or dishonest practices; failed to notify department of address change within 30 days.	Consent Order \$5,000 admin. fine 5/19/06
A-1666 Cathy Jo Turner Greenville, SC	Violated <u>Neb.Rev.Stat.</u> §§44-4050 and 44-4060(2). Sold, solicited or negotiated insurance.	Consent Order \$1,000 admin. fine 5/1/06

Actions Taken Against Producers (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1667 Heather Evers Omaha, NE	Application for producer's license denied.	Order License granted 6/6/06
A-1669 Julie Andretti Lincoln, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (h) and 44-1525(11). Violated any insurance law; used fraudulent, coercive or dishonest practices; failed to respond to Department within 15 business days.	Order \$1,000 admin. fine 7/24/06
A-1671 Victor Lindsey Torrance, CA	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (h). Violated any insurance law; used fraudulent, coercive or dishonest practices.	Order Producer license revoked 7/28/06
A-1672 James D. Knoll Ogallala, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(d) & (h). Misappropriated or converted monies collected; used fraudulent, coercive or dishonest practices.	Consent Order Producer license revoked 7/24/06

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1560 Chickering Claims Administrators, Inc. Cambridge, MA	Violated <u>Neb.Rev.Stat.</u> §44-1540(2) & (3) and Title 210 NAC Ch. 61 §§006.01, 006.03, 007.01, 008.02 & 008.03. Failed to acknowledge claims submitted within a reasonable time and to implement standards procedures for claims settlement; various violations of Unfair Claims Settlement Practices Rule.	Consent Order \$7,500 admin. fine 6/26/06
C-1566 Conseco Health Insurance Company Cedar Rapids, IA	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525 (11), 44-1539 & Title 210 NAC Ch. 61 §006.02. Unfair trade practices; unfair claims settlement practices.	Consent Order \$250 admin. fine 6/19/06
C-1570 Central United Life Insurance Company Houston, TX	Violated <u>Neb.Rev.Stat.</u> §§44-1524 and 44-1525(11). Unfair trade practices; failed to respond to Department within 15 business days.	Consent Order \$1,000 admin. fine 5/18/06

EXAMINATION DIVISION

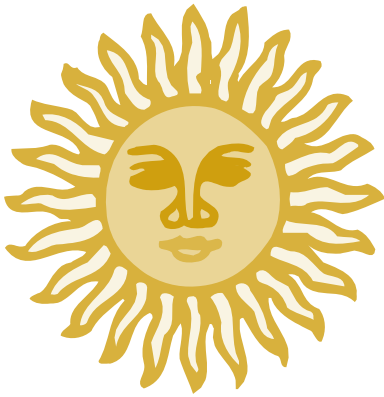
Pre-Need Exams Completed During Second Quarter, 2006

Biglin's Mortuary, Inc.

Financial Examinations Completed During Second Quarter, 2006

Ameritas Life Insurance Corporation
Ameritas Variable Life Insurance Company
Assurity Life Insurance Company
Capitol Casualty Company
Cornhusker Mutual Life Association I
Cornhusker Mutual Life Association III
Cornhusker Mutual Life Association IV
Farmers Mutual Fire Insurance Association of Seward County
Farmers Mutual Insurance Company of Nebraska
Physicians Life Insurance Company
Physicians Mutual Insurance Company
Preferred Professional Insurance Company
Washington County Mutual Insurance Company
West Coast Life Insurance Company
Western United Mutual Insurance Association
York County Farmers Mutual Insurance Company

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.



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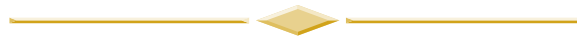
Department Calendar
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August 25- Consumer Information Booth,
September 4: Devaney Center, Nebraska State Fair

September 4: Department Closed - Labor Day

October 9: Department Closed - Columbus Day

November 10: Department Closed - Veteran's Day Observed



**State of Nebraska
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